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this Memorandum Decision shall not be
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establishing the defense of res judicata,
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APPELLANT PRO SE:

JOHN LEWIS,
Campbellsburg, Indiana

ATTORNEY FOR APPELLEE:

DANIEL L. BROWN
Allen Allen & Allen
Salem, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOHN LEWIS,

Appellant-Counterclaim Defendant,

vs.

WASHINGTON COUNTY HEALTH
DEPARTMENT, et al.,

Appellees-Counterclaimant.

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No. 88A01-0608-CV-354

APPEAL FROM THE WASHINGTON CIRCUIT COURT
The Honorable Daniel Donahue, Special Judge
Cause No. 88C01-0408-PL-241

June 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

John Lewis appeals the trial court's order granting the Washington County Health Department's (the "WCHD") motion to correct error and finding probable cause to search the non-residential areas of Lewis's property. Lewis raises two issues, which we restate as:

- I. Whether there was probable cause sufficient to permit the WCHD to search and inspect Lewis's property pursuant to applicable statutory law.
- II. Whether Lewis was prejudiced and denied due process by the trial court's decision to proceed with the July 1, 2005 hearing over Lewis's objection.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 1, 2004, the WCHD received a complaint from Bert Engler claiming there was a possible sewage discharge or condition that may promote disease on Lewis's residential property in violation of various health codes. Pursuant to applicable statute,¹

¹ IC 16-20-1-25 provides:

Unlawful conditions; abatement order; enforcement

- (a) A person shall not institute, permit, or maintain, any conditions that may transmit, generate, or promote disease.
- (b) A health officer, upon hearing of the existence of such unlawful conditions within the officer's jurisdiction, shall order the abatement of those conditions. The order must:
 - (1) be in writing if demanded;
 - (2) specify the conditions that may transmit disease; and
 - (3) name the shortest reasonable time for abatement.

administrative rule, and local rule, the WCHD, through its supervisor, Mike Haddon, sent Lewis a notice informing him that they had received complaints there was discharge of sewage to ground surface on his residential property, ordering him to correct the violation, and advising him that an inspection would take place sometime after thirty days.

Less than a month later, Lewis sought declaratory and injunctive relief and a finding that IC 16-20-1-23 is unconstitutional to the extent it authorizes the WCHD to search Lewis's residence without a warrant or exigent circumstances. Haddon and the WCHD counterclaimed for injunctive relief to enforce the terms of the WCHD's notice on Lewis. The parties eventually stipulated and the trial court approved the dismissal of Lewis's complaint, leaving only the WCHD's counterclaim. The parties further stipulated that: 1) absent permission of the parties or exigent circumstances, the WCHD would not enter Lewis's property without a court's finding of probable cause to conduct an administrative search; 2) probable cause for such an administrative search may not necessarily be the same as for criminal investigatory purposes, but should be determined pursuant to prevailing law; and 3) IC 16-20-1-23 should be interpreted to require that the WCHD must obtain judicial permission prior to conducting a health inspection, unless there is permission or exigent circumstances.

Thereafter, the water was shut off to Lewis's residence. On July 1, 2005, a

(c) If a person refuses or neglects to obey an order issued under this section, the attorney representing the county of the health jurisdiction where the offense occurs shall, upon receiving the information from the health officer, institute proceedings in the courts for enforcement. An order may be enforced by injunction. If the action concerning public health is a criminal offense, a law enforcement authority with jurisdiction over the place where the offense occurred shall be notified.

hearing was held to determine whether the court would grant the WCHD permission to enter Lewis's property. Lewis *pro se* objected to the hearing because he claimed he was not aware he should subpoena his witnesses. The matter proceeded, and the trial court took it under advisement. Twelve days later, the trial court denied the WCHD's request for entry onto Lewis's property. The WCHD filed a motion to correct error, and a hearing was held. The trial court granted the motion and granted limited entry onto Lewis's property. Lewis now appeals.

DISCUSSION AND DECISION

I. Probable Cause to Conduct an Administrative Search

Lewis contends that the trial court erred in granting WCHD's motion to correct error because there was not probable cause to conduct an administrative search of his property where the finding of probable cause is supported only by a complaint that was over a year old.

A reviewing court must determine whether the trial court had a substantial basis to find probable cause. *State v. Spillers*, 847 N.E.2d 949, 952 (Ind. 2006). Although, we undertake *de novo* review of whether there was a substantial basis to conclude there was probable cause, we give deference to the trial court's determination to the extent that reasonable inferences from a totality of the evidence supports a substantial basis. *Id.*

For the government to conduct a code-enforcement inspection of private property, absent exigent circumstances or the owner's consent, a warrant is required. *City of Vincennes v. Emmons*, 841 N.E.2d 155, 159 (Ind. 2006) (citing *Camara v. Mun. Court of City & County of San Francisco*, 387 U.S. 523 (1967)).

Here, the evidence on the record before us revealed that Haddon, as supervisor of the WCHD, received a complaint that there was sewage released to the ground on Lewis's property that may promote disease. Haddon informed Lewis that he must comply with applicable statutory law, administrative code, and local rules, and that the WCHD would be on his property after thirty days to ensure that Lewis was in compliance. Thereafter, Haddon never gained access to Lewis's property. At the July 1, 2005 hearing, Lewis admitted he had and used an outhouse and public water on his property up until a few months prior to the hearing. *Tr.* at 19. There had never been a permit for the construction of an outhouse on Lewis's property. And, Lewis made no showing that he adequately handled sewage during such time. Based on this evidence, we find there was a substantial basis for the trial court to conclude there was probable cause to search the property to determine whether there was a condition that may promote disease.

II. Objection to the July 1, 2005 Hearing

Next, Lewis claims that he was prejudiced and denied due process when the trial court did not sustain his objection to the July 1, 2005 hearing. However, Lewis fails to supply any cogent reasoning or cite any authority to support this argument in his brief; thus, he waives this issue on appeal. *See In re K.B.*, 793 N.E.2d 1191, 1198 n.4 (Ind. Ct. App. 2003) (citing Ind. Appellate Rule 46(A)(8)(a) (which provides, "The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to relevant authorities, statutes")); *see also App. R. 46(C)* ("No new issues shall be raised in the reply

brief”).

Waiver notwithstanding, Lewis was granted two continuances prior to the July 1, 2005 hearing and admitted that he held off in sending his subpoenas. *Tr.* at 19. Lewis had ample opportunity to prepare for and serve witnesses for the hearing. We do not find error in the trial court’s decision to proceed at the July 1, 2005 hearing.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.